



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 20, 1998

Mr. Bruce Isaacks  
Criminal District Attorney  
5<sup>th</sup> Floor Carroll Courts Building  
P.O. Box 2344  
Denton, Texas 76202

OR98-0990

Dear Mr. Isaacks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114087.

Several different departments of Denton County, including the Denton County District Attorney, received a joint open records request for eighteen categories of information pertaining to the enforcement of traffic laws and the search of automobiles by law-enforcement officers. You have requested an open records decision from this office with regard to the requested records to the extent that the records are held by the district attorney.<sup>1</sup> You have represented to this office that the only responsive records held by the district attorney are those records requested in item C of the open records request, which seeks "[a]ny record or document of each search conducted by Officers of vehicles for the last two years." You contend these records, a representative sample of which you have submitted to this office for review, including one videotape, are excepted from required public disclosure pursuant to sections 552.103, 552.107, and 552.108 of the Government Code.

You contend that one document you have designated as Exhibit 3 is excepted from public disclosure pursuant to section 552.107 as attorney work product. In Open Records Decision No. 647 (1996), this office concluded that the work product privilege is more properly raised under either section 552.103 or section 552.111 of the Government Code. To withhold work product under these exceptions the governmental body must show that

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<sup>1</sup>This ruling does not address the public nature of the requested records held by any of the other referenced county departments.

1) the information was created for trial or in anticipation of litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), and 2) the information consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5 citing *United States v. Nobles*, 422 U.S. 225, 236 (1975)). Exhibit 3 is a brief created by the district attorney in response to a defendant's motion to suppress. You explain that this brief was never filed with the court. Because this document necessarily tends to reveal an attorney's "mental processes, conclusions, and legal theories," we conclude that the district attorney may withhold this document in its entirety pursuant to section 552.111 of the Government Code as attorney work product.

You also contend that the video tape you have designated as Exhibit 6 may be withheld pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The requested records may therefore be withheld.<sup>2</sup>

Finally, we address the applicability of section 552.108 of the Government Code to the remaining documents at issue. Section 552.108(a)(1) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Because you state that the records before us pertain to pending criminal prosecutions, we conclude that you have met your burden of establishing that the release of the requested information at this time could interfere with law enforcement or prosecution. The district attorney, therefore, may withhold most of the information contained in these records at this time pursuant to section 552.108(a)(1).<sup>3</sup>

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<sup>2</sup>In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

<sup>3</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the records requested in item C. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. We specifically note that the district attorney must release copies

We note, however, that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). We also note that such "basic information" is not excepted from public disclosure pursuant to section 552.103. Open Records Decision No. 597 (1991). Because you have raised no other exception to disclosure, the district attorney must release the basic information regarding each of the searches and resulting arrests in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/ch

Ref.: ID# 114087

Enclosures: Submitted documents  
Submitted videotape

cc: Mr. James Scott  
Director of Legal Funding  
American Drivers Association  
200 Gate Way Center, Suite 326  
Liberty City, Texas 75662  
(w/o enclosures)

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of all public court records regarding these files.